

CHAPTER NO. 1097

SENATE BILL NO. 3089

By Person, Atchley

Substituted for: House Bill No. 2875

By Scroggs, McDaniel

AN ACT To amend Tennessee Code Annotated, Title 36, Chapter 1; Title 37, Chapter 1; Title 37, Chapter 2; Title 37, Chapter 3; Title 37, Chapter 5; and Title 71, Chapter 5, relative to foster care, permanency planning, adoption, and termination of parental rights, and services pertaining thereto.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 36-1-101(b), is amended by deleting the "and" at the end of subdivision (2). The subsection is further amended by deleting the "." at the end of subdivision (3) and by substituting instead the following punctuation and word "; and". The subsection is further amended by adding the following language as a new subdivision:

(4) Provide adoption promotion and support services and activities designed to encourage early permanency and adoptions, when adoptions promote the best interests of children, including such activities as pre- and post-adoptive services and activities designed to expedite the adoption process.

SECTION 2. Tennessee Code Annotated, Section 36-1-102 (1)(G), is amended by deleting the word "does" after the word "Abandonment" and by substituting instead the words "and abandonment of an infant do".

SECTION 3. Tennessee Code Annotated, Section 36-1-102, is amended by adding the following language as new, appropriately designated subsections and re-designating the existing subsections as appropriate:

() "Abandonment of an infant" means, for purposes of terminating parental or guardian rights, "abandonment" of a child under the age of one (1) year;

() "Aggravated circumstances" means abandonment, abandonment of an infant, aggravated assault, aggravated kidnapping, especially aggravated kidnapping, aggravated child abuse and neglect, aggravated sexual exploitation of a minor, especially aggravated sexual exploitation of a minor, aggravated rape, rape, rape of a child, incest, or severe child abuse as defined at 37-1-102;

SECTION 4. Tennessee Code Annotated, Section 36-1-113(g), is amended by deleting the word "Termination" and by substituting instead the words "Initiation of termination".

SECTION 5. Tennessee Code Annotated, Section 36-1-113(g)(3)(A)(i), is amended by adding the word "safe" after the word "child's" and before the word "return".

SECTION 6. Tennessee Code Annotated, Section 36-1-113(g)(3)(A)(ii), is amended by adding the word "safely" after the word "be" and before the word "returned".

SECTION 7. Tennessee Code Annotated, Section 36-1-113(g)(3)(A)(iii), is amended by adding the following word and punctuation "safe," after the word "a" and before the word "stable".

SECTION 8. Tennessee Code Annotated, Section 36-1-113, is amended by adding the following language as a newly designated subsection (h) and re-designating the remaining subsections appropriately:

(h)(1) The department shall file a petition to terminate the parental rights of the child's parents (or, if such a petition has been filed by another party, seek to be joined as a party to the petition), and, concurrently, to identify, recruit, process, and approve a qualified family for an adoption, under the following circumstances:

(A) in the case of a child who has been in foster care under the responsibility of the department for fifteen (15) of the most recent twenty-two (22) months; or

(B) if a court of competent jurisdiction has determined a child to be an abandoned infant as defined at Section 3 of this act; or

(C) if a court of competent jurisdiction has made a determination in a criminal or civil proceeding that the parent has committed murder of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, committed voluntary manslaughter of another such child, aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home, or committed a felony assault that has resulted in serious bodily injury or severe child abuse as defined at T.C.A. §37-1-102 to the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home. For the purposes of this subsection, such a determination shall be made by a jury or trial court judge designated by T.C.A. §16-2-502 through an explicit finding, or by such equivalent courts of other states or of the United States; or

(D) if a juvenile court has made a finding of severe child abuse as defined at T.C.A. §37-1-102.

(2) At the option of the department, the department may determine that a petition to terminate the parental rights of the child's parents shall not be filed (or, if such a petition has been filed by another party, shall not be required to seek to be joined as a party to the petition), if one of the following exists:

the child is being cared for by a relative;

or the department has documented in the permanency plan (which shall be available for court review) a compelling reason for determining that filing such a petition would not be in the best interests of the child; or

the department has not made reasonable efforts under T.C.A. Section 37-1-166 to provide to the family of the child,

consistent with the time period in the department permanency plan, such services as the department deems necessary for the safe return of the child to the child's home.

SECTION 9. Tennessee Code Annotated, Section 36-1-113 (h)(1), by adding the words "safe and" after the word "it" and before the word "in".

SECTION 10. Tennessee Code Annotated, Section 36-1-113(h)(7), by adding the words "in a safe and stable manner" after the word "child" and before the ";".

SECTION 11. Tennessee Code Annotated, Section 36-1-113(h)(8), is amended by adding the words "safe and stable" after the word "providing" and before the word "care".

SECTION 12. Tennessee Code Annotated, Section 37-1-166(g), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(1) As used in this section, "reasonable efforts" means the exercise of reasonable care and diligence by the department to provide services related to meeting the needs of the child and the family. In determining reasonable efforts to be made with respect to a child, as described in this paragraph, and in making such reasonable efforts, the child's health and safety shall be the paramount concern.

(2) Except as provided in subparagraph (4), reasonable efforts shall be made to preserve and reunify families:

(A) prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and

(B) to make it possible for a child to safely return to the child's home.

(3) If continuation of reasonable efforts of the type described in subparagraph (2) is determined to be inconsistent with the permanency plan for the child, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(4) Reasonable efforts of the type described in subparagraph (2) shall not be required to be made with respect to a parent of a child if a court of competent jurisdiction has determined that:

(A) the parent has subjected the child that is the subject of the petition or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home to aggravated circumstances as defined in Section 3 of this act;

(B) as set out in Section 8 of this act, the parent has:

(i) committed murder of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home;

(ii) committed voluntary manslaughter of any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home;

(iii) aided or abetted, attempted, conspired, or solicited to commit such a murder or such a voluntary manslaughter of the child or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home; or

(iv) committed a felony assault that results in serious bodily injury to the child or any sibling or half-sibling of the child who is the subject of the petition or any other child residing temporarily or permanently in the home; or

(C) the parental rights of the parent to a sibling or half-sibling have been terminated involuntarily;

(5) If reasonable efforts of the type described in subparagraph (2) are not made with respect to a child as a result of a determination made by a court of competent jurisdiction in accordance with subparagraph (4):

(A) a permanency hearing shall be held for the child within 30 days after the determination; and

(B) reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) Reasonable efforts to place a child for adoption or with a legal guardian may be made concurrently with reasonable efforts of the type described in subparagraph (2).

SECTION 13. Tennessee Code Annotated, Section 37-2-402 (10), is amended by adding the following language as a new, appropriately designated subdivision and by re-designating the remaining subdivisions appropriately:

() "Abandonment of an infant" means, for purposes of terminating parental or guardian rights, "abandonment" of a child under the age of one (1) year;

SECTION 14. Tennessee Code Annotated, Section 37-2-402 (10)(G), is amended by deleting the word "does" after the word "Abandonment" and by substituting instead the words "and abandonment of an infant do".

SECTION 15. Tennessee Code Annotated, Section 37-2-403(a)(2)(A), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(2) The permanency plan for any child in foster care shall include: a statement of responsibilities between the parents, the agency and the caseworker of such agency. Such statements shall include the responsibilities of each party in specific terms and shall be reasonably related to the achievement

of the goal specified in subdivision (a)(1). The statement shall include the definitions of abandonment of an infant contained in §36-1-102 and the criteria and procedures for termination of parental rights. Each party shall sign the statement and be given a copy of it. The court must review the proposed plan, make any necessary modifications and ratify or approve the plan within sixty (60) days of the foster care placement. The Department of Children's Services shall, by rules promulgated pursuant to the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, Part 2, determine the required elements or contents of the permanency plan.

SECTION 16. Tennessee Code Annotated, Section 37-2-403(a)(3), is amended by adding the following punctuation and words “, except as provided in Section 12 of this act” after the word “placement” and before the “.” at the end of the last sentence of the subdivision.

SECTION 17. Tennessee Code Annotated, Section 37-2-403(a)(4)(C), is amended by adding the following punctuation and words “, except as provided in Section 12 of this act” after the word “placement” and before the “.” at the end of the last sentence of the subdivision.

SECTION 18. Tennessee Code Annotated, Section 37-2-404(b), is amended by adding after the word “determine” and before the word “the” in the third sentence the words and punctuation “the safety of the child,”.

SECTION 19. Tennessee Code Annotated, Section 37-2-409(a), is amended by deleting the words and numeral “eighteen (18)” after the word “within” and before the word “months” in the first sentence and by substituting instead the word and numeral “twelve (12)”. This subsection is further amended by deleting the word “dispositional” in the second sentence and by substituting instead the word “permanency”.

SECTION 20. Tennessee Code Annotated, Section 37-2-409(b)(1), is amended by deleting the word “dispositional” in the first sentence and by substituting instead the word “permanency”.

SECTION 21. Tennessee Code Annotated, Section 37-2-409(b)(2), is amended by deleting the word “dispositional” in the first sentence and by substituting instead the word “permanency”. This subdivision is further amended by deleting the numeral “37” in the last sentence and by substituting instead the numeral “36”.

SECTION 22. Tennessee Code Annotated, Title 37, Chapter 2, Part 4, is amended by adding the following language as a new, appropriately designated section:

The department shall notify the foster parents (if any) or any prospective adoptive parent or relative providing care for the child with notice of any review or hearing to be held with respect to the child. The foster parents (if any) of a child and any prospective adoptive parent or relative providing care for the child shall be provided with an opportunity to be heard in any review or hearing to be held with respect to the child, except that this subparagraph shall not be construed to require that any foster parent, prospective adoptive parent, or relative providing care for the child made a party to such a review or hearing solely on the basis of such notice and opportunity to be heard.

SECTION 23. Tennessee Code Annotated, Section 37-3-601, is amended by deleting the section in its entirety and by substituting instead the following language:

This part shall be known and may be cited as the "Safe Families and Family Preservation Act". The family support services and time-limited family reunification services authorized pursuant to the provisions of this act shall be subject to the funds appropriated to the department by the Tennessee General Assembly.

SECTION 24. Tennessee Code Annotated, Section 37-3-602, is amended by adding the following language as new, appropriately designated subsections and re-designating the existing subsections appropriately:

() "Family support services" means community-based services to promote the safety and well-being of children and families designed to increase the strength and stability of families (including adoptive, foster, and extended families), to increase parents' confidence and competence in their parenting abilities, to afford children a safe, stable and supportive family environment, and otherwise to enhance child development;

() "Time-limited family reunification services" means the services and activities described below that are provided to a child that is removed from the child's home and placed in a foster family home or a child care institution and to the parents or primary caregiver of such a child, in order to facilitate the reunification of the child safely and appropriately within a timely fashion, but only during the 15-month period that begins on the date that the child, pursuant to Section 13 of this act, is considered to have entered foster care. The services and activities described in this subsection are the following:

Individual, group, and family counseling;

(A) Inpatient, residential, or outpatient substance abuse treatment services;

(B) Mental health services;

(C) Assistance to address domestic violence;

(D) Services designed to provide temporary child care and therapeutic services for families, including crisis nurseries;

(E) Transportation to or from any of the services and activities described in this subsection.

SECTION 25. Tennessee Code Annotated, Section 37-3-603, is amended by deleting the section in its entirety and by substituting the following:

(a) The Department of Children's Services shall develop, coordinate and implement a program to provide family services to each family with a child at imminent risk of placement; provided, that delivery of family preservation services shall be limited to those families and situations in which the services may be reasonably expected to avoid out-of-home placement of the child and to also afford effective protection of the child, the family, and the community.

(b) The Department of Children's Services shall develop, coordinate and implement a program to provide time-limited family reunification services to each family with a child in foster care; provided, that delivery of time-limited family reunification services shall be limited to those foster children or parents or primary caregiver and shall be limited to the 15-month period that begins on the date that

the child, pursuant to Section 13 of this act, is considered to have entered foster care.

SECTION 26. Tennessee Code Annotated, Section 37-3-604, is amended by deleting the section in its entirety and by substituting instead the following:

37-3-604. The department shall conduct ongoing evaluations of family preservation and support services and shall file a report, on or before December 31 of each year, with the Governor, the chair of the General Welfare, Health and Human Resources Committee of the Senate, the chair of the Committee on Child and Family Affairs of the House of Representatives, and the chair of the Select Committee on Children and Youth. The report shall include the following information for the preceding fiscal year:

(1) The number of families receiving services through the program;

(2) The number of children at imminent risk of placement prior to initiation of service in families receiving services and the number of foster care children and their parents or primary caregiver who are receiving time-limited family reunification services;

(3) Among those children identified in subdivision (2), the number of children placed in foster care, in group homes and in other facilities outside the home;

(4) The average cost of services provided under the program;

(5) The estimated cost of out-of-home placement, through foster care, group homes or other facilities, which would otherwise have been expended on behalf of those children who successfully remain united or have been reunited with their families as a result of the program, based on average lengths of stay and average cost of such out-of-home placements;

(6) The number of children who remain unified with their families for one (1), two (2) and three (3) years, respectively, after receiving services; and

(7) An overall statement of the achievements and progress of the program during the preceding year, along with recommendations for improvement.

SECTION 27. Tennessee Code Annotated, Section 37-3-605, is amended by adding the following language at the end of the section: "Effective July 1, 1998, the Department of Children's Services shall have sole responsibility for implementing this part."

SECTION 28. Tennessee Code Annotated, Section 37-5-109(1), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(1) The department shall license or approve and supervise child abuse agencies, child-caring institutions, child-placing agencies, detention centers, family boarding or foster care homes, group care homes, maternity homes and temporary holding resources. Not later than January 1, 1999, the department shall develop and implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health

of the children. Exceptions to the department's licensing responsibilities concerning the aforementioned categories are contained in Section 71-3-527;

SECTION 29. Tennessee Code Annotated, Section 71-5-106(i), is amended by deleting the subsection in its entirety and by substituting instead the following language:

(i) In addition to the other categories of eligibility under this section, there shall be a category of medical assistance eligibility for those children who:

(1)(A) were born after September 30, 1967;

(B) are eighteen (18) years of age or younger; and

(C) are in intact families which meet the aid to families with dependent children (AFDC) income and resource requirements; or

(2) as provided at Title IV of the Social Security Act, have been determined to be a child with special needs, for whom there is in effect an adoption assistance agreement between the Department of Children's Services and an adoptive parent or parents, and who the Department of Children's Services has determined cannot be placed with an adoptive parent or parents without medical assistance because such child has special needs for medical, mental health, or rehabilitative care.

SECTION 30. Tennessee Code Annotated, Section 37-2-403, is amended by adding the following language as a new appropriately, designated subsection:


() Whenever a child is removed from his or her home and placed in the department's custody, the department shall seek to place the child with a fit and willing relative if such placement provides for the safety and is in the best interest of the child. Notwithstanding any provision of this section or any other law to the contrary, whenever return of a child to his or her parent is determined not to be in the best interest of the child, then such relative with whom the child has been placed shall be given priority for permanent placement or adoption of the child prior to pursuing adoptive placement of such child with a non-relative.

SECTION 31. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 32. This act shall take effect on July 1, 1998, the public welfare requiring it.

PASSED: April 29, 1998


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of May 1998


DON SUNDQUIST, GOVERNOR